Assembly Bill No. 252

CHAPTER 849

An act to amend Sections 7575 and 7634 of, to add Section 7635.5 to, and to add Article 1.5 (commencing with Section 7645) to Chapter 4 of Part 3 of Division 12 of, the Family Code, relating to paternity.

[Approved by Governor September 28, 2004. Filed with Secretary of State September 28, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 252, Jackson. Paternity judgments.

(1) Existing law provides for a voluntary declaration of paternity. Existing law also authorizes a court to set aside a voluntary declaration of paternity.

This bill would authorize a court to set aside a voluntary declaration of paternity unless the court determines that denial of an action to set aside the voluntary declaration of paternity is in the best interest of the child following consideration of specified factors.

(2) Existing law permits a local child support agency to bring an action to determine the existence or nonexistence of a father and child relationship.

This bill would permit the Department of Child Support Services to review the current practices of service of process in regard to those actions, and to develop methods to increase personal delivery.

This bill would also require a court to inform an alleged father of a child of his right to have genetic testing performed to determine if he is the biological father and of his right to move to set aside or vacate a judgment of paternity, as specified.

(3) Existing law authorizes a local child support agency to issue an administrative order requiring the mother, the child, and the alleged father to submit to genetic testing to determine paternity in any civil action or proceeding in which paternity is a relevant fact and a contested issue.

This bill would set forth procedures whereby certain persons may move to set aside or vacate a default judgment establishing paternity entered by a court of this state, as specified.

(4) Existing law authorizes a party in a civil action to make a motion to vacate a judgment within a specified period of time.

This bill would permit the court to grant those motions if certain conditions are satisfied, as specified, and would require court-ordered genetic testing, if requested by an authorized person or the court. Ch. 849 — **2** —

Regardless of those test results, the bill would confer upon the court the discretion to deny a motion, if that is in the best interest of the child after consideration of specified factors. The bill would not apply to any adoption case or to any paternity case relating to a child conceived by artificial insemination, and would not affect specified distributions.

This bill would further set forth related procedures with regard to local child support agencies that provide specified services. The bill would authorize those agencies to issue administrative orders requiring genetic testing pursuant to the above, and would require those agencies to pay for that testing. By imposing additional duties on local child support agencies, the bill would create a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 7575 of the Family Code is amended to read: 7575. (a) Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the Department of Child Support Services within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The Department of Child Support Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the Department of Child Support Services. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that certifies that a copy of the rescission form was sent by any form of mail requiring a return receipt to the other person who signed the voluntary declaration of paternity. A copy of the return receipt shall be attached to the rescission form when filed with the Department of Child Support Services. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and

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deaths. The department shall, upon written request, provide to a court or commissioner a copy of any rescission form filed with the department that is relevant to proceedings before the court or commissioner.

- (b) (1) Notwithstanding Section 7573, if the court finds that the conclusions of all of the experts based upon the results of the genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the man who signed the voluntary declaration is not the father of the child, the court may set aside the voluntary declaration of paternity unless the court determines that denial of the action to set aside the voluntary declaration of paternity is in the best interest of the child, after consideration of all of the following factors:
 - (A) The age of the child.
- (B) The length of time since the execution of the voluntary declaration of paternity by the man who signed the voluntary declaration.
- (C) The nature, duration, and quality of any relationship between the man who signed the voluntary declaration and the child, including the duration and frequency of any time periods during which the child and the man who signed the voluntary declaration resided in the same household or enjoyed a parent-child relationship.
- (D) The request of the man who signed the voluntary declaration that the parent-child relationship continue.
- (E) Notice by the biological father of the child that he does not oppose preservation of the relationship between the man who signed the voluntary declaration and the child.
- (F) The benefit or detriment to the child in establishing the biological parentage of the child.
- (G) Whether the conduct of the man who signed the voluntary declaration has impaired the ability to ascertain the identity of, or get support from, the biological father.
- (H) Additional factors deemed by the court to be relevant to its determination of the best interest of the child.
- (2) If the court denies the action, the court shall state on the record the basis for the denial of the action and any supporting facts.
- (3) (A) The notice of motion for genetic tests under this section may be filed not later than two years from the date of the child's birth by a local child support agency, the mother, the man who signed the voluntary declaration as the child's father, or in an action to determine the existence or nonexistence of the father and child relationship pursuant to Section 7630 or in any action to establish an order for child custody, visitation, or child support based upon the voluntary declaration of paternity.
- (B) The local child support agency's authority under this subdivision is limited to those circumstances where there is a conflict between a

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voluntary acknowledgment of paternity and a judgment of paternity or a conflict between two or more voluntary acknowledgments of paternity.

- (4) The notice of motion for genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for putting the issue of paternity before the court.
- (c) (1) Nothing in this chapter shall be construed to prejudice or bar the rights of either parent to file an action or motion to set aside the voluntary declaration of paternity on any of the grounds described in, and within the time limits specified in, Section 473 of the Code of Civil Procedure. If the action or motion to set aside a judgment is required to be filed within a specified time period under Section 473 of the Code of Civil Procedure, the period within which the action or motion to set aside the voluntary declaration of paternity must be filed shall commence on the date that the court makes an initial order for custody, visitation, or child support based upon a voluntary declaration of paternity.
- (2) The parent or local child support agency seeking to set aside the voluntary declaration of paternity shall have the burden of proof.
- (3) Any order for custody, visitation, or child support shall remain in effect until the court determines that the voluntary declaration of paternity should be set aside, subject to the court's power to modify the orders as otherwise provided by law.
- (4) Nothing in this section is intended to restrict a court from acting as a court of equity.
- (5) If the voluntary declaration of paternity is set aside pursuant to paragraph (1), the court shall order that the mother, child, and alleged father submit to genetic tests pursuant to Chapter 2 (commencing with Section 7550). If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the genetic tests, are that the person who executed the voluntary declaration of paternity is not the father of the child, the question of paternity shall be resolved accordingly. If the person who executed the declaration as the father of the child is not excluded as a possible father, the question of paternity shall be resolved as otherwise provided by law. If the person who executed the declaration of paternity is ultimately determined to be the father of the child, any child support that accrued under an order based upon the voluntary declaration of paternity shall remain due and owing.
- (6) The Judicial Council shall develop the forms and procedures necessary to effectuate this subdivision.
 - SEC. 2. Section 7634 of the Family Code is amended to read:
- 7634. (a) The local child support agency may, in the local child support agency's discretion, bring an action under this chapter in any case in which the local child support agency believes it to be appropriate.

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- (b) The Department of Child Support Services may review the current practices of service of process used by the local child support agencies pursuant to subdivision (a), and may develop methods to increase the number of persons served using personal delivery.
 - SEC. 3. Section 7635.5 is added to the Family Code, to read:
- 7635.5. In any action brought pursuant to this article, if the alleged father is present in court for the action, the court shall inform the alleged father of his right to have genetic testing performed to determine if he is the biological father of the child. The court shall further inform the alleged father of his right to move to set aside or vacate a judgment of paternity pursuant to Section 7646 within two years of the date he received notice of the action to establish paternity, and that after that time has expired he may not move to set aside or vacate the judgment of paternity, regardless of whether genetic testing shows him not to be the biological father of the child.
- SEC. 4. Article 1.5 (commencing with Section 7645) is added to Chapter 4 of Part 3 of Division 12 of the Family Code, to read:

Article 1.5. Setting Aside or Vacating Judgment of Paternity

- 7645. For purposes of this article, the following definitions shall apply:
- (a) "Child" means the child of a previously established father, as determined by the superior court in a judgment that is the subject of a motion brought pursuant to this article, or as a matter of law.
- (b) "Judgment" means a judgment, order, or decree entered in a court of this state that establishes paternity, including a determination of paternity made pursuant to a petition filed under Section 300, 601, or 602 of the Welfare and Institutions Code, or a voluntary declaration of paternity. For purposes of this article, "judgment" does not include a judgment in any action for marital dissolution, legal separation, or nullity.
- (c) "Previously established father" means a person identified as the father of a child in a judgment that is the subject of a motion brought pursuant to this article.
- (d) "Previously established mother" means a person identified as the mother of a child in a judgment that is the subject of a motion brought pursuant to this article.
- 7646. (a) Notwithstanding any other provision of law, a judgment establishing paternity may be set aside or vacated upon a motion by the previously established mother of a child, the previously established father of a child, the child, or the legal representative of any of these persons if genetic testing indicates that the previously established father

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of a child is not the biological father of the child. The motion shall be brought within one of the following time periods:

- (1) Within a two-year period commencing with the date on which the previously established father knew or should have known of a judgment that established him as the father of the child or commencing with the date the previously established father knew or should have known of the existence of an action to adjudicate the issue of paternity, whichever is first, except as provided in paragraph (2) or (3) of this subdivision.
- (2) Within a two-year period commencing with the date of the child's birth if paternity was established by a voluntary declaration of paternity. Nothing in this paragraph shall bar any rights under subdivision (c) of Section 7575.
- (3) In the case of any previously established father who is the legal father as a result of a default judgment as of the effective date of this section, within a two-year period commencing with the enactment of this section.
- (b) Subdivision (a) does not apply if the child is presumed to be a child of a marriage pursuant to Section 7540.
- 7647. (a) A court may grant a motion to set aside or vacate a judgment establishing paternity only if all of the following conditions are met:
 - (1) The motion is filed in a court of proper venue.
- (2) The motion contains, at a minimum, all of the following information, if known:
- (A) The legal name, age, county of residence, and residence address of the child.
- (B) The names, mailing addresses, and counties of residence, or, if deceased, the date and place of death, of the following persons:
- (i) The previously established father and the previously established mother, and the biological mother and father of the child.
 - (ii) The guardian of the child, if any.
 - (iii) Any person who has physical custody of the child.
- (iv) The guardian ad litem of the child, if any, as appointed pursuant to Section 7647.5.
- (C) A declaration that the person filing the motion believes that the previously established father is not the biological father of the child, the specific reasons for this belief, and a declaration that the person desires that the motion be granted. The moving party is not required to present evidence of a paternity test indicating that the previously established father is not the biological father of the child in order to bring this motion pursuant to Section 7646.
- (D) A declaration that the marital presumption set forth in Section 7540 does not apply.

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- (3) The court finds that the conclusions of the expert, as described in Section 7552, and as supported by the evidence, are that the previously established father is not the biological father of the child.
- (b) The motion shall include a proof of service upon the following persons, excluding the person bringing the motion:
 - (1) The previously established mother.
 - (2) The previously established father.
- (3) The local child support agency, if services are being provided to the child pursuant to Title IV-D or IV-E of the Social Security Act (42 U.S.C. Sec. 651 et seq. and 42 U.S.C. Sec. 670 et seq.).
 - (4) The child's guardian ad litem, if any.
- 7647.5. A guardian ad litem may be appointed for the child to represent the best interests of the child in an action brought pursuant to this article.
- 7647.7. Any genetic testing used to support the motion to set aside or vacate shall be conducted in accordance with Section 7552. The court shall, at the request of any person authorized to make a motion pursuant to this article, or may upon its own motion, order genetic testing to assist the court in making a determination whether the previously established father is the biological father of the child.
- 7648. If the court finds that the conclusions of all of the experts, based upon the results of genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) of Part 2, indicate that the previously established father is not the biological father of the child, the court may, nevertheless, deny the motion if it determines that denial of the motion is in the best interest of the child, after consideration of the following factors:
 - (a) The age of the child.
- (b) The length of time since the entry of the judgment establishing paternity.
- (c) The nature, duration, and quality of any relationship between the previously established father and the child, including the duration and frequency of any time periods during which the child and the previously established father resided in the same household or enjoyed a parent-child relationship.
- (d) The request of the previously established father that the parent-child relationship continue.
- (e) Notice by the biological father of the child that he does not oppose preservation of the relationship between the previously established father and the child.
- (f) The benefit or detriment to the child in establishing the biological parentage of the child.

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- (g) Whether the conduct of the previously established father has impaired the ability to ascertain the identity of, or get support from, the biological father.
- (h) Additional factors deemed by the court to be relevant to its determination of the best interest of the child.
- 7648.1. If the court denies a motion pursuant to Section 7648, the court shall state on the record the basis for the denial of that motion and any supporting facts.
- 7648.2. (a) This section applies only to cases where support enforcement services are being provided by a local child support agency pursuant to Section 17400.
- (b) Upon receipt of any motion brought pursuant to Section 7646, the local child support agency may issue an administrative order requiring the mother, child, and the previously established father to submit to genetic testing if all of the conditions of paragraphs (1) and (2) of subdivision (a) of Section 7647 are satisfied.
- (c) The local child support agency shall pay the costs of any genetic tests that are ordered under subdivision (b) or are ordered by a court for cases in which the local child support agency is providing services under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).
- (d) Nothing in this section prohibits any person who has been ordered by a local child support agency to submit to genetic tests pursuant to this section from filing a notice of motion with the court seeking relief from the local child support agency's order to submit to genetic tests. In that event, the court shall resolve the issue of whether genetic tests should be ordered as provided in Section 7647.7. If any person refuses to submit to the tests after receipt of the administrative order pursuant to this section and fails to seek relief from the court from the administrative order either prior to the scheduled tests or within 10 days after the tests are scheduled, the court may resolve the question of paternity against that person or enforce the administrative order if the rights of others or the interest of justice so require.
- 7648.3. A court may not issue an order setting aside or vacating a judgment establishing paternity pursuant to this article under any of the following circumstances:
- (a) The judgment was made or entered by a tribunal of another state, even if the enforcement of that judgment is sought in this state.
- (b) The judgment was made or entered in this state and genetic tests were conducted prior to the entry of the judgment which did not exclude the previously established father as the biological father of the child.
- 7648.4. Notwithstanding any other provision of law, if the court grants a motion to set aside or vacate a paternity judgment pursuant to this article, the court shall vacate any order for child support and

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arrearages issued on the basis of that previous judgment of paternity. The previously established father has no right of reimbursement for any amount of support paid prior to the granting of the motion.

- 7648.8. This article does not establish a basis for termination of any adoption, and does not affect any obligation of an adoptive parent to an adoptive child.
- 7648.9. This article does not establish a basis for setting aside or vacating a judgment establishing paternity with regard to a child conceived by artificial insemination pursuant to Section 7613 or a child conceived pursuant to a surrogacy agreement.
- 7649. Nothing in this article shall limit the rights and remedies available under any other provision of law with regard to setting aside or vacating a judgment of paternity or a voluntary declaration of paternity.
- 7649.5. Notwithstanding any other provision of this article, a distribution from the estate of a decedent or payment made by a trustee, insurance company, pension fund, or any other person or entity that was made in good faith reliance on a judgment establishing paternity that is final for purposes of direct appeal, may not be set aside or subject to direct or collateral attack because of the entry of an order setting aside or vacating a judgment under this article. An estate, trust, personal representative, trustee, or any other person or entity that made that distribution or payment may not incur any liability to any person because of the distribution or payment or because of the entry of an order under this article.
- SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.